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Nos. ~~777~~ and ~~932~~.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968.

No. 777.

THE FIRST NATIONAL BANK IN PLANT CITY,
Plant City, Florida, Petitioner,

v.

FRED O. DICKINSON, JR.,
Comptroller of the State of Florida, et al.

No. 932.

WILLIAM B. CAMP,
Comptroller of the Currency, Petitioner,

v.

FRED O. DICKINSON, JR.,
Comptroller of the State of Florida, et al.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF FOR PETITIONER

The First National Bank in Plant City.

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May 9, 1969.

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The First National Bank in Plant City.

OPINIONS BELOW.

The opinion of the Court of Appeals (A., p. 391) is reported at 400 F. 2d 548. The opinion of the District Court (A., p. 365) is reported at 274 F. Supp. 449.

JURISDICTION.

The judgment of the Court of Appeals was entered on September 12, 1968. By order of December 9, 1968, Mr. Justice Black extended the time for filing a petition for writ of certiorari to and including January 10, 1969 (A., p. 410). The petition was filed on that date, and was granted on February 24, 1969 (A., p. 411).

The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED.

1. Whether a national bank may be precluded by state law from engaging in activities which are authorized by provisions of the National Bank Act, 12 U. S. C. 21, et seq., which do not specifically incorporate state law.

2. Whether activities of a national bank other than those described at 12 U. S. C. 36 (f), and in particular the off-premises messenger and receptacle services conducted by First National Bank may properly be considered branching within the meaning of the National Bank Act.

STATUTES AND REGULATIONS INVOLVED.

The statutes involved are 12 U. S. C. 36 (c) and 36 (f) and section 659.06 (1) (a), Florida Statutes. They are printed in the Statutory Appendix, infra, pp. A-1–A-6. The regulation involved is § 7490 of the Comptroller of the Currency's Manual for National Banks (A., p. 381).

STATEMENT.

Petitioner, The First National Bank in Plant City (hereafter First National), is a national banking association organized and operated pursuant to the National Bank Act, 12 U. S. C. 21, et seq. ("the Act"), with its only office in Plant City, Florida. Pursuant to ruling No. 7490[1] of the Comptroller of the Currency, who is the supervisor of national banks, First National began on October 3, 1966 to offer a messenger service to assist its customers in transporting cash and other items to and from the Bank for deposit or withdrawal. Briefly, the messenger service functions as follows.[2]

First National owns an armored car which is driven by an employee of the Bank. Customers of the bank, primarily those operating commercial establishments, may contract with the bank for regular or occasional pick-up and delivery of funds. Customers using the service must enter into a "Comprehensive Dual Control Contract" (A., p. 91) with the Bank which provides among other things, that the Bank is acting as agent for the customer in transporting the money. In addition, transmittal slips (A., p. 123) which provide that monies picked up by the messenger are not deemed to be deposited until received by tellers at the banking house, accompany each pick-up. The Dual Control Contract and a "debit memo" provide that funds delivered to customers must have already been charged against their accounts before the delivery.

In addition to his schedule of pick-up and delivery at customers' business establishments, the messenger also

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[1] Comptroller's Manual for National Banks, § 7490 (A., p. 381).

[2] The operations are described in more detail in the depositions of William M. Rickert, President of First National (A., pp. 76-112), Charles Futch, Vice President (A., pp. 113-152) and of William C. Meriwether, the Bank's messenger (A., pp. 48-76).

goes daily to a receptacle which First National has constructed at a local shopping center. Items for pick-up by the messenger may be placed in the receptacle together with the same form of transmittal slip used for direct pick-up (or a transmittal envelope incorporating by reference the language of the transmittal slip).

Shortly before inauguration of its messenger service, First National received a letter from the Deputy Commissioner of Banking of the State of Florida[3] advising the Bank that the service was in violation of Section 659.06 (1) (a), Florida Statutes[4] and threatening "legal proceedings" unless the Bank should "cease and desist" from the proposed operation. No reference was made in the letter to the National Bank Act or to the approval by the federal Comptroller.

In order to forestall the threatened "legal proceedings" and to remove the cloud which the State Commissioner had created with respect to the messenger service, First National, on October 7, 1966, brought this action against the Commissioner for declaratory judgment and injunctive relief in the United States District Court for the Northern District of Florida.

The complaint (A., p. 15) asked, *inter alia,* for declaratory judgment that First National was subject to the paramount federal law respecting national banks and that any state law or interpretation of state law must yield when in conflict with the federal declaration of national bank powers. First National also asked the court to declare judgment that its messenger and receptacle services were not in violation of Section 659.06 (1) (a), Florida Statutes. Finally, the complaint sought judgment that

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[3] The letter is reproduced at A., p. 23.

[4] Section 659.06 (1) (a), Florida Statutes, is reproduced in the Statutory Appendix, infra, at p. A-5.

state officials have no authority to supervise national banks and requested an injunction to prevent the State Commissioner from further interfering in the operations of plaintiff's business.

Defendant's answer (A., p. 28) asserted that the Florida statute is made binding on First National by 12 U. S. C. 36 (c) and that the messenger service is also in violation of 12 U. S. C. 81.[5]

Subsequently, three competing state banks intervened on the side of the State Commissioner and the United States Comptroller of the Currency entered the case in support of First National.[6]

Following hearings on numerous motions and the filing of extensive depositions and other evidentiary material, the District Court, on May 6, 1967, granted summary judgment for First National and the federal Comptroller "with respect to the issues raised concerning the application of 12 U. S. C. 36 and 12 U. S. C. 81" (A., p. 375).

In an accompanying Memorandum Decision (A., pp. 365-374) the District Judge ruled that the National Bank Act, at 12 U. S. C. 36 (f), contains an "exclusive defini-

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[5] § 81. Place of business

The general business of each national banking association shall be transacted in the place specified in its organization certificate and in the branch or branches, if any, established or maintained by it in accordance with the provisions of Section 36 of this title.

[6] The affidavit of Comptroller William B. Camp in support of his Motion to Intervene asserted that:

"The operation of messenger pickup and receptacle services represents a useful and potentially important aspect of the regular operations of National Banks. This is a practice which has continued over a long period of time and, in my judgment, is of considerable benefit to the banking public as well as to the banks themselves" (A., pp. 160-161).

tion" of the term "branch" insofar as national banks are concerned and that the activities performed through First National's messenger service do not constitute branching within the terms of that definition. The Court found further that the service in question was not "the general banking business" off-premises in violation of 12 U. S. C. 81. With respect to the effect of Florida law in the matter, the Court held that "once it is established that the activity in question is not a branch within the meaning of federal law there is no occasion for application of state statutes with respect to branching."

Final judgment, incorporating the Order and Memorandum of May 6, and disposing of several remaining points was entered June 2, 1967.

All defendants appealed and the Court of Appeals, following full briefing and oral argument, reversed the District Court on September 12, 1968.

The opinion of the Court of Appeals did not set aside the District Court's finding that the First National messenger and receptacle services do not involve receiving deposits, paying checks or making loans, the identifying characteristics of a national bank branch as set forth in 12 U. S. C. 36 (f). Instead the Circuit Court observed that:

> "The controlling issue of law in this appeal concerns the district court's choice of law, i. e., that court's failure to consult state law in determining whether First National's activities outside its main offices constitute 'branch banking'" (A., pp. 396-397).

The Court then devoted most of the remainder of its opinion to the argument that in passing on the lawfulness of First National's messenger operation it could properly avoid a decision as to whether the activities fall within

the perimeters of section 36 (f) "and look instead to the laws of Florida" (A., p. 408).

The Court reached this conclusion in partial reliance upon this Court's decision in **First National Bank v. Walker Bank & Trust Co.**, 385 U. S. 252 (1966), which it read as having application beyond the scope of the fact situation which was before the **Walker** court, namely, the degree to which state law govern[illegible] operations of a national bank facility which is admitted as a branch under 12 U. S. C. 36 (f).

Secondly, the Court relied upon and quoted at great length from a decision of a United States District Court in the State of Washington, **State Chartered Banks in Washington v. Peoples National Bank of Washington**, 291 F. Supp. 180 (W. D. Wash., 1966). In so doing, the Court of Appeals below apparently adopted an opinion which is in direct conflict with its own conclusion. The Washington court had held specifically that before a national bank facility could be subjected to the requirements of state law it must be shown to be performing one of the functions set forth at section 36 (f).

The Court below, however, stating that section 36 (f) "is hardly adequate as a definition" (A., p. 406), made no such finding. Instead, the Court merely applied the Florida Statute which permits a bank to have only one place of business, found that First National's messenger service constitutes "doing business" away from its main office and reversed the District Court.

SUMMARY OF ARGUMENT.

I.

Federal Law Controls the Question of Whether First National's Messenger and Receptacle Services Are Lawful.

In order to resolve the original issue raised in this case, the lawfulness of First National's off-premises services, it is first necessary to determine which law is applicable. The federal Comptroller, First National and the District Court believe that federal law, in particular the National Bank Act. 12 U. S. C. 21, et seq., controls. The State Comptroller, the State banks, and the Court of Appeals considered Florida law, in particular section 659.06 (1) (a), to be "operative and controlling" (A., p. 392).

First National submits that the National Bank Act represents a complete statutory plan for the creation, operation and supervision of national banks and that this Court has regularly held that state statutes become applicable to national banks only where Congress has directly or implicitly deferred to state law. The National Bank Act incorporates State statutory law insofar as the operation of bank branches is concerned but no deference to state law is required in connection with national bank off-premises activities which do not constitute branches.

Facilities of national banks which are deemed branches are defined, at 12 U. S. C. 36 (f), as places at which "deposits are received, or checks paid, or money lent." No other standard for determining what is a branch is stated or implied in the National Bank Act and decisions of federal courts and administrators have been consistent in looking only to the section 36 (f) definition in assessing the character of national bank off-premises operations.

The Court of Appeals erred in applying Florida law to First National's messenger service which the District Court had held not to be branching within the meaning of the National Bank Act.

II.

First National's Messenger and Receptacle Services Do Not Constitute Branching Within the Meaning of the National Bank Act.

The District Court considered factual evidence and determined that First National's off-premises activities do not include receiving deposits, making loans or paying checks, the functions which constitute branching under the National Bank Act, and that, consequently, First National's off-premises activities do not constitute branching. The Court of Appeals, because it believed that Florida law and not federal law is "controlling," did not disturb the District Court's decision on this point but simply found the Bank's activities to be "doing business" away from the main office in alleged violation of Florida law. Petitioner submits that the District Court was correct in concluding that, by all standards of commercial law and usage and on the basis of the facts in this case, none of the functions enumerated at Section 36 (f) is performed off-premises by First National. Accordingly, the Court of Appeals erred in finding that First National's operations are unlawful.

ARGUMENT.

I.

Federal Law Controls the Question of Whether First National's Messenger and Receptacle Services Are Lawful.

The threshold question in this case is whether the legality of First National's messenger and receptacle services should be viewed in the context of federal or Florida law. The State Commissioner had argued that the services were, in fact, branches, and, as such, made subject to Florida law by 12 U. S. C. 36 (c). Before there can be a decision as to whether the operations in dispute constitute branch banking, however, the issue of how branching is defined must be settled. This issue inevitably involves a choice of law.

The District Judge stated the issue directly by finding:

> ". . . that once it is established that the activity in question is not a branch within the meaning of federal law there is no occasion for application of state statutes with respect to branching . . ." (A., p. 373).

The District Court then applied federal law and concluded that the activity in question is not a branch within the meaning of federal law and accordingly was not subject to Florida "branching" law.

The Court of Appeals disagreed with the District Court's "choice of law, i. e., that court's failure to consult state law in determining First National's activities outside its main offices constitute branch banking" (A., p. 396). Instead, the Circuit Court concluded "that in this instance Florida law is operative and controlling" (A., p. 392).

Petitioner, First National, believes that the District Court and not the Court of Appeals correctly decided this question.

A. **National Bank operations are subject to state law only to the extent provided by Congress.**

The degree to which the several states may, by legislative or administrative action, affect the operations of national banks has been an issue brought regularly to this Court in the 105 years since passage of the National Bank Act. A number of fundamental premises which have underlain the Court's approach to this question are apparent.

First of all, the Court has always acknowledged that the national banking system is a separate and distinct creature of federal law and that the National Bank Act provides a complete system for the governance of national banks. A clear statement of this operating assumption is found in **Easton v. Iowa**, 188 U. S. 220 (1903), in which the Court found inapplicable to a national bank, a state statute purporting to forbid insolvent national banks from receiving deposits. The Court reversed the Supreme Court of Iowa with these words:

> "We think that this view of the subject is not based on a correct conception of the Federal legislation creating and regulating national banks. That legislation has in view the erection of a system extending throughout the country, and independent, so far as powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the states." 188 U. S. at 229.

The National Bank Act had earlier been characterized by the Court as follows:

> "We consider that Act as constituting by itself a complete system for the establishment and government of national banks . . ."
>
> "Everything essential to the formation of the banks, the issue, security and redemption of their notes, the

winding up of the institutions and the distribution of their effects, are fully provided for, as in a separate code by itself . . ."

Cook County National Bank v. United States, 107 U. S. 445, 448 (1883); accord. **Davis v. Elmira Savings Bank,** 161 U. S. 276 (1896).

While making clear that the National Bank Act is pre-eminent in defining the powers and limitations on national bank activities the Court has acknowledged that state statutes may, on occasion, be applicable to national banks. Where, for instance, there is clearly no provision, express or implied, in the federal Act with respect to a specific activity, state legislatures may properly legislate in the area. Thus, in **First National Bank v. Missouri,** 263 U. S. 654 (1924), the Court found that there was nothing in the Act in its form at that time[7] which expressly or impliedly conferred the power to establish branches on national banks. The Court, therefore, found a state law forbidding branching not to be in conflict with the federal statute.

A more recent application of this principle is found in **Franklin National Bank v. New York,** 347 U. S. 373 (1953), where the State of New York sought to enforce against a national bank, a state statute prohibiting, *inter alia,* all banks in New York (other than savings banks) from using the words "saving" or "savings" in their advertising. Citing **Easton v. Iowa** and **Davis v. Elmira Savings Bank** (supra), the Court concluded that:

> "We find no indication that Congress intended to make this phase of national banking subject to local restrictions, as it has done by express language in several other instances." 347 U. S. at 377-378.

---

[7] The decision in the **First National Bank** case was a precipitating factor in the passage several years later of the McFadden Act, which first gave national banks the right to branch (see discussion at Section I-B, infra).

Inasmuch as Congress had specifically accorded to national banks the right to accept deposits and had not specifically limited their means of acquiring them, the Court found that there existed "a clear conflict between the law of New York and the law of the Federal government" (ibid, p. 378).

In its footnote 7 at page 378 the Court pointed to several instances in which the National Bank Act specifically makes national bank operations subject to state law thus demonstrating the approach favored by Congress when it chooses to defer to state law in this area. As the footnote points out, "even in the absence of such express language, national banks may be subject to some state laws in the normal course of business if there is no conflict with federal law." However, the decision in the **Franklin National Bank** case (where no direct reference to the activity in question—advertising—is contained in the federal statute) makes entirely clear that the presumptions, in the absence of a specific deferral to state law, are strongly against state statutes which interfere with national bank operations.

The rationale behind the Congressional scheme generally isolating national banks from state statutory and administrative regulation is easily perceived. Initially, national banks were seen as active instruments of federal policy brought into existence "to aid the government in the administration of an important branch of the public service." **Farmers' and Merchants National Bank v. Dearing**, 91 U. S. 29, 34 (1875). As such instruments they were conceived of as totally beyond the reach of state power.

An equally important reason for strictly limiting the reach of state law into the realm of national bank operations was set forth in **Easton v. Iowa**, 188 U. S. 220, 231 (1903):

> "But we are unable to perceive that Congress intended to leave the field open for the states to attempt to promote the welfare and stability of national banks by direct legislation. If they had such power it would have to be exercised and limited by their own discretion, and confusion would necessarily result from control possessed and exercised by two independent authorities."

As this case abundantly illustrates, confusion does "necessarily result" when state officials attempt to control the operations of national banks. So long as there are two discrete banking systems clear lines of separation in their supervision are indispensable.

B. **The off-premises activities of national banks are subject to state law only to the extent that they constitute branching as defined by 12 U. S. C. 36 (f).**

Applying to the question presented in this case the rule that state law affects national bank operations only in those areas where state law is specifically deferred to in the National Bank Act or where there is clearly no relevant provision in the Federal Act, express or implied, it is evident that the restrictive Florida statute, applied by the Court of Appeals in this case, is not applicable.

While the National Bank Act, at 12 U. S. C. 36 (c), does specifically incorporate state law with respect to the establishment and operation of new branches, it is equally clear that those off-premises activities of a national bank which are not branching are not subject to state law.

Long before the McFadden Act gave national banks the power to branch, national banks were conducting regular off-premises activities. This Court, as early as 1870, concluded that the National Bank Act permitted national banks to conduct various aspects of their business, particularly through agents, away from the main

banking office, although there was, and is, no specific authority in the Act to do so. In **Merchants Bank v. State Bank**, 77 U. S. 604 (1870), the Court said:

> "It is objected that the checks were not certified by the cashier at his banking-house. The provision of the act of Congress as to the place of business of the banks created under it must be construed reasonably. The business of every bank, away from its office—frequently large and important—is unavoidably done at the proper place by the cashier in person, or by correspondents or other agents." 77 U. S. at 650-651.

The distinction between branching and various other functions performed by banks off-premises was recognized by the Attorney General of the United States in his 1911 opinion (29 Ops. Atty. Gen. 81) which concluded that national banks, at that time, had no power to establish branches. In his opinion (which was specifically cited with approval by this Court in **First National Bank v. Missouri**, 263 U. S. 640 at 658 and in n. 1 on that page) the Attorney General acknowledged the implied authority for national banks to carry on various activities incident to their banking business away from the banking house so long as they did not amount to the general banking business. The distinction was spelled out as follows:

> "These authorities are conclusive of the proposition that a bank may maintain an agency, the power of which is restricted to dealing in bills of exchange, or possibly to some other class of business incident to the banking business . . .
>
> "These cases clearly indicate that the courts recognize a vital distinction between a mere agency for the transaction of a particular business and a branch bank wherein is carried on a general banking business.

"That such a distinction does exist in fact is obvious.

"An agency requires no division of the capital stock, and the details of the business are few and are easily supervised by the officers of the bank, while a branch bank requires, in effect, a division of the capital, the working force is organized, and the business conducted as if it were a separate organization, and it competes in all branches of the banking business with other banks in that locality the same as if it were an independent institution." 29 Ops. Atty. Gen. at 86-88.

It is clear, therefore, that prior to passage of the McFadden Act in 1927 (which added most of what is now section 36), national banks were deemed to be authorized by the National Bank Act to conduct various activities away from their banking house so long as they were relatively simple and did not amount to the "general banking business". Typically such activities were conducted through an "agency" of the bank.

The McFadden Act[8] can in no way be construed as diminishing the powers already possessed by national banks.[9] On the contrary, the Act effected the greatest broadening of national bank powers in the history of the national bank system. Any power conferred by Congress in 1927 must be considered as adding to authority already possessed by national banks. It is in this context that the definitional section incorporated into the Act in 1927 as 12 U. S. C. 36 (f) is properly viewed. Section 36 (f) provides:

"(f) The term 'Branch' as used in this section shall be held to include any branch bank, branch

[8] 44 Stat. 1228.

[9] The relevant legislative history of the McFadden Act is discussed in more detail in the brief of the Solicitor General in No. 932, filed concurrently herewith.

> office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent."

The plain purpose of the McFadden Act was to give to national banks the right to maintain facilities at which the "general banking business" (namely, receiving deposits, paying checks and making loans) could be carried on in addition to their pre-existing power to conduct various lesser operations off-premises. As to the greater power, added in 1927, Congress concluded that a link to state policy in the area should be forged and so included the section 36 (c) reference to state statutory law.

In a manner which is not entirely clear from its opinion, the Court of Appeals apparently deemed this Court's decision in **First National Bank of Logan, Utah v. Walker Bank and Trust Co.**, 385 U. S. 252 (1966), to signal a retreat from the concept that federal law normally controls national bank operations. Seizing on the **Walker Bank** reference to "competitive equality" which motivated Congress to give national banks branching powers so as to permit them to compete effectively with state banks, the opinion below observes that "before **Walker Bank**, courts had sometimes subordinated [competitive equality] to the desire to adhere to federal law" (A., p. 399). With **Walker**, however, the Court below apparently believed, federal law was rolled back in areas where it had previously been supreme. Such a conclusion is plainly not justified by the facts in the **Walker Bank** case or the language of its opinion.

The issue in **Walker Bank** was the extent to which a national bank activity which undeniably met the section 36 (f) definition of "branch" was subject to state requirements as to how and where such a branch could be estab-

lished. The Court focused on the McFadden Act provision that "new branches" may be approved only if "such establishment" would be authorized to State banks by the State's law, and concluded that whatever limitations were imposed by the state of Utah on the establishment of new branches of state chartered banks should apply as well to national banks. The fulcrum of the Court's opinion is the statement that:

> "It appears clear from this resume of the legislative history of § 36 (c) (1) and (2) that Congress intended to place national and state banks on a basis of 'competitive equality' **insofar as branch banking was concerned.**" 385 U. S. at 261. [Emphasis added.]

No facts were involved in the **Walker** case relating to a national bank off-premises activity which was not a branch and the Court carefully limited the reach of its language relating to the interplay of federal and state law so as to include only branch banking. No retreat from the Court's earlier approach, most recently evident in **Franklin Bank** can be found in **Walker.** On the contrary, in **Walker** the Court simply reaffirmed the language of section 36 (c) which broadly applies state law to a national bank branch. The Court of Appeals below erred in reading a wider meaning into the **Walker** opinion.

C. 12 U. S. C. 36 (f) provides the only applicable definition of what constitutes a national bank branch.

The District Court below held that:

> "The definition of branch contained at 12 U. S. C. 36 (f) must be deemed to be the exclusive definition with respect to national banks. **Jackson v. First National Bank of Valdosta,** 246 F. Supp. 134 (1965). (A., p. 371).

However, the Court of Appeals found 36 (f) to be "hardly adequate as a definition because it merely sets

out in general terms what everyone knows to be the life-blood functions of banking" (A., pp. 406-407). In so ruling, the Fifth Circuit came into direct conflict with the Court of Appeals for the District of Columbia and with various district courts.

In **Camden Trust Company v. Gidney**, 301 F. 2d 521 (1962), cert. denied 369 U. S. 886 (1962), the District of Columbia Circuit was required to decide if a newly chartered national bank was "for all practical purposes" a branch facility of another bank which had been instrumental in its formation. State law would have precluded the operation of a branch at the location in question.

The Court of Appeals concluded that it was not necessary to consult state law in determining whether the facility in question was a branch inasmuch as the National Bank Act, Section 12 U. S. C. 36, dealing with branching "is clear on its face and says, without ambiguity, exactly what it means" and that "(b)eyond peradventure, Congress even defined the term 'branch' ". 301 F. 2d at 54.

Again, in **Whitney National Bank v. Bank of New Orleans & Trust Co.**, 323 F. 2d 290 (1963), rev'd on other grounds, 379 U. S. 411, the District of Columbia Circuit, in passing on the question of whether an affiliated bank was in reality a branch of another bank, observed that through the section 36 (f) definition, Congress had given "meaning to the word branch" (323 F. 2d at 301).

The Fifth Circuit itself had made clear in an earlier case that it understood the identifying characteristics of a national bank branch to be those stated at section 36 (f). Relating sections 36 (c) and 36 (f), Chief Judge Tuttle stated the Court's interpretation as follows:

> ". . . Thus, a national banking association is precluded from opening any office at which deposits are received, checks paid, or money lent unless a similarly situated state bank would be authorized under state

law to open a similar office. **Jackson v. First National Bank of Valdosta,** 349 F. 2d 71, 72.[10]

In other words, the definition of a national bank branch which requires compliance with state law is an office at which deposits are received, checks paid or money lent, the precise definition set forth at section 36 (f).[11]

The decision of the Court of Appeals below quotes at length and with strong approval from the decision of the United States District Court for the Western District of Washington in the case of **State Chartered Banks in Washington v. Peoples National Bank of Washington,** 291 F. Supp. 180 (W. D. Wash., 1966). In that case the defendant sought to establish a drive-in facility 260 feet away and across the street from a branch of the bank, to be serviced by two tellers and a supervisor (ibid. at 183). Defendant admitted that "the proposed facility will receive deposits and pay checks" (ibid. at 195). It was not disputed that Washington state law would have prohibited a branch at the proposed site.

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[10] The Court of Appeals in **Valdosta** remanded the case to the District Court to determine if a branch, as so defined, had in fact been established. The District Court subsequently found that the facility met two of the three criteria set forth in section 36 (f) and was therefore a branch. In so doing the Court said:

> "This court is convinced that in construing the definition of 'branch' found in 12 U. S. C., § 36 (f) it should be guided by federal considerations. In other words 'branch' should be defined according to federal law . . ."
>
> "The patent meaning of this part of the statute is that an 'additional office' or 'branch place of business' will be considered a 'branch' for purposes of § 36 if any one of the three specified conditions is met, i. e., if deposits are received or checks are paid or money is lent." **Jackson v. First National Bank of Valdosta,** 246 F. Supp. 134, 138 (M. D. Ga. 1965).

[11] Congress itself referred to section 36 as a definition of the term "branch". H. Rep. No. 583, 68th Cong., 1st Sess. (1924), p. 3. This report and such other legislative history as exists with respect to section 36 (f) is discussed in the brief of the Solicitor General in No. 932, filed concurrently herewith.

The opinion covers many issues but the one for which the Court below primarily cites it is the effect of section 36 (f) on the off-premises activity.

It is perfectly clear, however, that the Washington opinion is directly contrary to the conclusion reached by Judge Goldberg in this case. The Washington Court considered the relationship of federal and state law in the branching area and concluded that 12 U. S. C. 36 (f) provides the definition of the "functions" of a national bank branch. If it is determined that one of the three functions there set forth (receiving deposits, paying checks or lending money) is present, one must then look to state law for further "refinements" to the definition. Thus, the Court said:

> ". . . This decision [Valdosta] makes it fairly clear that **once the facility passes the broad functional test set forth in section 36 (f) the state law takes over** and may further define 'branch' in such a way as to comport with the state's banking policy. This was precisely the purpose Congress had in mind when it passed the McFadden Act. [Emphasis supplied.] (291 F. Supp. at 195.)
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> * * * * * * *
>
> "The test of 'banchness' in this situation is therefore twofold—(1) Does the facility fit the broad functional definition laid down by Congress in Section 36 (f), **and if so**, (2) Does the state law add any more refinements to the definition? [Emphasis supplied.] (id.)

Since defendants there admitted that the proposed facility received deposits and paid checks it plainly met the "functional" tests of section 36 (f) thus bringing state law into play. Had there been no finding that one of the three section 36 (f) functions was performed at the facility, which was the finding of the District Judge in this

case, there would have been no occasion for the application of state law.

In other words, section 36 (f) is a definition of the term "branch". If a national bank activity falls within the perimeters of that definition then it is a branch, and subject to state law. Petitioner, First National, thoroughly concurs in this statement of the law. If this is the proper construction of sections 36 (c) and (f), the decision of the Court below to ignore the section 36 (f) requirements and look directly to the Florida law is in error.

Apparently recognizing the direct inconsistency between the decision of the Court below and the **State Chartered Banks** opinion upon which it is so heavily based, respondents have attempted in their brief in opposition to First National's petition for certiorari to recast the Fifth Circuit opinion in a more defensible light. Correctly stating the law, respondents assert: "Since the activity must be a branch as defined under section 36 (f) before state branching law ever comes into play, any facility which did not have the characteristics of a branch under federal law would not be controlled by state law" (Resp. Brief, p. 15). Respondents then imply that the Court of Appeals decided that First National's messenger and receptacle services involved the performance of the activities listed in section 36 (f) and accordingly constitute branches.

It is clear, however, that the Circuit Court specifically failed to make a determination as to whether First National's off-premises activities included any of the section 36 (f) functions prior to applying Florida law to find those activities unlawful. The District Judge had found that deposits were not received nor checks paid nor money lent away from First National's banking premises,[12] and that

[12] There had been no serious contention that money was lent off-premises; see fn. 13, infra, p. 24.

". . . the armored car and receptacle services . . . do not constitute branching . . . in violation of 12 U. S. C. 36 . . ." (A., p. 371).

On appeal, the briefs and arguments of the parties were directed largely to the question of whether the District Court had been correct in so finding. In particular, the dispute revolved around the issue of whether the physical transfer to cash from customers to the Bank's messenger constituted receiving a deposit.

Nevertheless, in its opinion, the Court below did not disturb the District Court's finding that the section 36 (f) functions were not performed. Instead the Court observed:

> ". . . that courts must not look to Section 36 (f) as their sole guiding light but must permit rays of state law to refract and reflect their statutory vision" (A., p. 400).

and that:

> ". . . Congress did not seek to devitalize Section 36 (f) with eternally static concepts, we likewise conclude that flexibility is to be accorded not by any federal common law of branching, but rather by recourse to state law" (A., p. 407).

The Court then held that:

> "The Florida statute permits only one place of business, and this direction is uncomplicated unhedged, and unmodified. 'Doing business' in Florida can be minimal. Cf. **Phillips v. Hooker Chemical Corp.**, 5 Cir. 1967, 375 F. 2d 189. Unless we were to cast away all concepts of the functional 'business' of a bank, we would have to conclude that First National was 'doing business' with its extra services" (A., pp. 408-409).

Inasmuch as Florida law is applicable to First National's activities in this instance only to the extent that

they constitute branching, as defined at section 36 (f), it was error for the Court of Appeals to apply Florida law in the face of the District Court's decision that the functions set forth in the federal statute are not performed. Inasmuch as the federal branching definition is not met by the operations in question, the Court's conclusion that First National's activities fell within Florida's "minimal" doing business standard is irrelevant.

II.

First National's Messenger and Receptacle Services Do Not Constitute Branching Within the Meaning of the National Bank Act.

From the inception of this litigation the factual dispute has been cast in the context of the National Bank Act definition of banking, 12 U. S. C. 36 (f). The District Court received testimony, voluminous depositions and other evidence relating to the operations of First National's messenger and receptacle services, focusing particularly on the extent to which they might involve receiving deposits, paying checks or making loans. On the basis of the facts the Court concluded that First National's off-premises operations "are not branches within the meaning of 12 U. S. C. 36" (A., p. 376).

In the Court of Appeals much of the briefing and oral argument centered more specifically on the question of whether First National's messenger and receptacle operations constituted receiving deposits off-premises.[13] The

[13] In the Courts below, the State Comptroller made only the briefest reference to the possibility that First National might be making a temporary loan by means of its "change accounts." The point was not pursued but, in any event, it is clear that if any such loan was made (which the District Court found not to be the case), it would have been made at the main banking house when the messenger received the funds. Respondents' Brief in opposition to First National's Petition for Cer-

Court's opinion, however, avoids any discussion of the point and, in effect, leaves undisturbed the District Court's finding that deposits are not received, checks paid or money lent, by First National's messenger and receptacle services. The Court of Appeals' decision merely concludes that, under Florida law, the Bank is "doing business" off-premises in the "minimal" sense required by Florida law.

The question of when a deposit is received is an important one in commercial transactions and is governed by contract between the parties and well-defined judicial and statutory limitations. The transactions performed through First National's messenger and receptacle services cannot, by any definition, be considered receiving deposits and the District Court was correct in so holding.

A. **A deposit is a contractual relationship which has a well defined meaning.**

The word "deposit" as used in statutes and in commercial transactions connotes "a transaction peculiar to the banking business, and one that the courts should recognize and deal with according to commercial usage and undertaking." 5A Michie, **Banks and Banking**, § 4A at 22 (1950); **National Surety Co. v. McCormick**, 268 Fed. 185 (7th Cir. 1920); **McCormick v. Hopkins**, 287 Ill. 66, 122 N. E. 151 (1919).

The determination of when a deposit is created is not a casual one inasmuch as it gives rise to the relationship

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tiorari omits any assertion that Petitioner Bank is making loans off-premises.

The "change account" was also cited by the State Comptroller as a means of "cashing" checks off-premises. The District Court took note of this possibility and specifically reserved approval of the practice. First National subsequently discontinued the practice and the question is now moot. **Amalgamated Association v. Wisconsin Board**, 340 U. S. 416 (1951).

of debtor and creditor. **Tarrent County Water Control and Improvement District v. Maxwell,** 109 F. 2d 604, 606 (5th Cir. 1940), cert. denied, 310 U. S. 633, **Northern Sugar Co. v. Thompson,** 13 F. 2d 829 (8th Cir. 1926); **In Re Thourer' Estate,** 166 So. 2d 476 (Fla. App. 2d Dist. 1964).

The deposit relationship of debtor and creditor is created by the contractual relationship of the bank and the depositor and the two parties may agree to any lawful terms to govern the creation, duration and termination of that relationship. The general rule has been stated as follows:

> "The relation of depositor and banker arises only out of contract, express or implied . . ."[14]
>
> "The parties may contract as to the terms and conditions under which the bank will handle a deposit, and, in the absence of a violation of statute or other rules of law, a bank deposit is subject to any agreement that the depositor and banker may make with regard to it, so long as the rights of third persons are not injuriously affected. Thus, where the parties so agree, a bank deposit may constitute a bailment, title to the fund remaining in the depositor and not passing to the bank . . ." 9 C. J. S., **Banks & Banking,** § 267, pp. 545-547.

A deposit will not be implied absent such a conscious contractual understanding.

> "Title to money does not pass from the legal owner thereof to the bank, and the relation of creditor and debtor does not arise between them as to money deposited without his knowledge or consent. No one can

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[14] This principle has been regularly applied in Florida; see e. g., **McCrory Stores v. Tunnicliffe,** 104 Fla. 683, 140 So. 806 (1932). Florida law governs the construction of contracts entered into in that jurisdiction. 5A Michie, **Banks & Banking,** Chap. 9, § 5 at 29 (1950).

create this relation between the owner of money and the bank without authority from the owner." 5A Michie, **Banks & Banking**, § 15 at 38-39 (1950).

B. **The service performed through First National's messenger and receptacle does not constitute receiving deposits.**

The essential elements of the operation at issue in this case are not complex. First National enters into contracts with its customers to pick up cash and items from them for delivery to the bank where they will be received as deposits and credited to the customers' accounts. First National also contracts to debit customers' accounts and deliver the monies to customers. The pick-up of items for delivery to the Bank is done both by messenger directly at the place of business and through a stationary receptacle. In all instances of pick-up and delivery, a contractual instrument purports to define the relationship of the parties.

As a matter of practice the Bank requires that cash or other items picked up either from a customer's place of business or from the receptacle be accompanied by a Messenger Transmittal Slip[15] specifying that the parties agree that monies picked up "shall not be deemed to be a deposit until delivered into the hands of the bank's tellers at the said banking house" and that the Bank acts "solely as agent for said Principal" (customer) in picking up the funds. In most instances, a Comprehensive Dual Control Contract to the same effect has been signed by both parties. All deliveries of money are made pursuant to the Dual Control Contract and require signature of the Messenger Service Debit Slip stating that the customer's account has already been charged for the amount delivered.

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[15] Or a transmittal envelope incorporating by reference the language of the transmittal slip.

The intent of First National and its customers that no deposit be considered received until the monies are received at the banking house is therefore explicitly incorporated into the contractual documents which govern their transactions.[16]

It is equally clear that the effect of these contracts is fully appreciated, as a practical matter, by the Bank's employees and customers. Thus, the bank messenger recounted his instructions as follows:

> Q. What were you directed or told at these meetings? A. To make sure that the customer understood that when this money was brought to the bank it was not a deposit until it got to the bank and we were merely acting as their agent in transporting it; . . . (A., p. 66).

The Manager of Eckerd's Store testified as follows:

> Q. Do you know when your funds are credited to your account in the bank? A. To the best of my knowledge when the deposits are checked in at the bank (A., p. 230).

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[16] Respondents alleged below that First National's customers did not always follow the Bank's established procedures in using the messenger service. For instance, it was established that, on at least one occasion, a customer had used a transmittal slip which did not contain the customary contractual language. The District Court dismissed this argument as follows:

> "In declaring judgment on the issues involved in this partial summary judgment the Court passes only on the propriety of the Comptroller's rulings and the procedures which First National has set up to put the rulings into effect. The fact that in particular instances a customer or one of the bank's employees may have deviated from the authorized and established procedures does not detract from their lawfulness. The record affirmatively shows that the bank has actually carried out its declared intent in the execution of the specific operation to a substantial degree. This is enough to entitle it to a judicial determination of legal efficacy in this declaratory degree action" (A., pp. 373-374).

A supermarket owner described his understanding of the Service in the following language:

> Q. Did you sign any agreement with the bank authorizing them to charge your account? A. Well, I understood, Mr. Smith, when I signed up for this service that when I got money by this method that it would be charged to my account when it left the bank; and if I had any monies to deposit to the bank, it would not be deposited to my account until it got to the bank (A., p. 329).

Arrangements such as those provided by First National for the transmission of monies to the banking house for deposit are not uncommon. Even without the careful contractual language present here, such dealings are not considered to give rise to receipt of deposits until the funds are delivered to the Bank's office. Thus, in **Moses Lake State Bank v. Bell**, 223 P. 587, 589 (1924), the Supreme Court of Washington ruled as follows:

> ". . . It seems to be well settled banking law that in order to charge a bank with liability as for a general deposit the deposit must have been actually made at the banking house of the bank sought to be so charged, and that when a would-be depositor of a bank places his funds, whether in the form of cash, checks, or drafts, in the hands of another at some place away from the bank, even though such other person be an officer of the bank, there is not thereby consummated a deposit chargeable as such against the bank, however much the would-be depositor and such other person may have intended such act as consummating a deposit. Such act goes no farther in its legal effect than to make the person so receiving such funds an agent of the would-be depositor to cause such funds to be actually deposited in the bank at its usual place of doing business."

Similarly, the placement of funds in the Bank's receptacle, though intended to lead to a deposit, does not constitute receiving a deposit. The receptacle was found by the District Court to be "an arrangement analogous to night-depositories found at most banks" (A., p. 372). The Court then held that "(i)t is well settled that the placement of funds in such depositories does not create a depositor-depositee relationship but rather one of bailor-bailee" (A., p. 372).

The effect of placing funds in a receptacle to be retrieved by a bank for deposit was described in **Bernstein v. Northwestern National Bank**, 157 Pa. Super. 73, 41 A. 2d 440, 441 wherein a customer sued his bank to recover the amounts of cash and checks which he had placed in the bank's night depository and which subsequently disappeared. The Court ruled for the bank saying:

> "A general deposit was contemplated by the parties as indicated by the bank in advertising the service and the procedures adopted by it. The mere placing of money in the mechanical depository, however, did not result in a general deposit. The device was no more than the means of initiating such deposit. Delivery by this method was a tender to the bank for that purpose but was a bank deposit only in the making. Some unequivocal act by the bank thereafter was necessary to make it a general deposit and to create the status of debtor and creditor. This relationship cannot result without the consent of both parties to the transaction."

Accord: **Nordin v. Eagle Rock State Bank**, 139 Cal. App. 584, 34 P. 2d 490 (1934); 10 **Am. Jur.** 2d, Section 358 (1963).

C. **The term "deposit" as used in 12 U. S. C. 36 (f) should be given its customary meaning.**

Virtually no legislative history exists with respect to the incorporation of the section 36 (f) definition into the McFadden Act in 1927[17] or its reexamination in the Banking Act of 1933. However, considerable light is cast on what in all probability was the Congressional understanding in enacting section 36 (f) by an examination of the Banking Act of 1935[18] which amended certain sections of the Banking Act of 1933 creating the Federal Deposit Corporation.

Section 101 of the 1935 Act contained a definitions section which defined both "branch" and "deposit" as follows:

> "(15) The term 'branch' includes any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State of the United States or in Hawaii, Alaska, Puerto Rico, or the Virgin Islands at which deposits are received or checks paid or money lent."
>
> "(12) The term 'deposit' means the unpaid balance of money or its equivalent received by a bank in the usual course of business and for which it has given or is obligated to give credit to a commercial, checking, savings, time or thrift account, or which is evidenced by its certificate of deposit, and trust funds held by such bank whether retained or deposited in any department of such bank or deposited in another bank, together with such other obligations of a bank as the board of directors shall find and shall prescribe by its regulations to be deposit liabilities by general usage . . ."

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[17] See n. 11, p. 20, supra.

[18] 49 Stat. 685-686; 12 U. S. C. 1813.

The 1935 definition of "branch" is in every relevant respect identical to the language of 12 U. S. C. 36 (f) by which "branch" was defined in the 1927 and 1933 National Bank Act legislation. Unlike the earlier bills, however, Congress provided in 1935 a key to interpretation of the branch section's use of the word "deposit". The later definition ". . . was not intended to change or modify the law but to express the Congressional interpretation of the meaning of the word 'deposit' as it existed in the act from the beginning." **FDIC v. Records**, 34 F. Supp. 600, 602 (W. D. Mo. 1940).

Courts interpreting the 1935 Act have regularly reached the conclusion that a deposit comes into being only where the relationship of debtor and creditor has been established. **FDIC v. Continental Illinois Bank and Trust Co.**, 245 F. 2d 567 (7th Cir., 1957), cert. denied, 355 U. S. 877; **FDIC v. Deaton**, 105 F. 2d 677 (10th Cir., 1939); **Farmers State Bank of Amherst**, 67 S. D. 51, 289 N. W. 75 (1939).

In other words, in the light of the Banking Act of 1935 an off-premises banking service which gathered funds for transport to the bank would not be engaged in receiving deposits absent some clear agreement between bank and customer that a debtor-creditor relationship was to be established prior to receipt of the funds at the banking house. In view of the virtual identity of branch definitions in the 1927 and 1935 acts and the close proximity in time of enactment, there is every reason to believe that Congress had the same substantive activities in mind each time it defined "branch". This is especially so since the 1935 definition closely reflects the general commercial usage discussed above.

In addition to the interpretation of the concept of "receiving deposits" required under the FDIC Act and the ruling of the Comptroller of the Currency interpreting

12 U. S. C. 36 (f)[19] both of which make clear that First National's messenger and receptacle do not constitute such receipt, the Board of Governors of the Federal Reserve System, which supervises all state member banks has reached the same conclusion with respect to the banks under its jurisdiction.[20] In a ruling published at 12 C. F. R. 208.110, the Board ruled as follows:

> "It is assumed, however, the service in question would involve picking up deposits at the respective addresses of particular customers and the payment of checks drawn by such customers on the bank; that the 'messenger' normally would be an armored car owned by the bank or by an independent contractor; that the cost of the service would be borne by the bank; that, in the case of deposits, there would be a written agreement between the bank and the customer under which the messenger would act as agent of the customer and the bank would assume no liability for the funds collected until they were received by it from the messenger at the bank's premises; and that, in the case of payment of checks, the checks would be presented at the bank's premises by the messenger acting as agent of the customer and the proceeds received by the messenger for transmittal to the customer, with no liability on the part of the bank for such proceeds after their delivery to the messenger.
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> "Assuming the facts to be as stated above, the Board does not regard such arrangements as involving the establishment and operation of branches by

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[19] Comptrollers Manual for National Banks, § 7490 (A., p. 381).

[20] 12 U. S. C. 31 provides that, with the approval of the Board, State member banks may retain and operate branches on the same terms and conditions as national banks. This requires the Board to interpret 12 U. S. C. 36 (f).

State member banks. Whether the use of messenger service in other circumstances would constitute branch banking would, of course, have to be determined on the basis of the facts involved."

Administrative interpretations of the National Bank Act are thus in accord that the kind of off-premises activities conducted by First National do not involve receiving deposits so as to constitute branching within the meaning of the federal legislation.

CONCLUSION.

The First National Bank in Plant City first offered a messenger service to its customers in October of 1966. For three years without ceasing it has been required to litigate its right to provide this basic service. The trier of fact found the service to be lawful. The issues have been fully briefed before three courts. First National now respectfully urges this Court to put an end to this litigation by ruling that its operations are governed by the National Bank Act and that they are in compliance with the requirements of that Act.

Respectfully submitted,

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STATUTORY APPENDIX.

APPENDIX A.

12 U. S. C. 36:

The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) A national banking association may retain and operate such branch or branches as it may have had in lawful operation on February 25, 1927, and any national banking association which continuously maintained and operated not more than one branch for a period of more than twenty-five years immediately preceding February 25, 1927, may continue to maintain and operate such branch.

(b) (1) A national bank resulting from the conversion of a State bank may retain and operate as a branch any office which was a branch of the State bank immediately prior to conversion if such office—

(A) might be established under subsection (c) of this section as a new branch of the resulting national bank, and is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank;

(B) was a branch of any bank on February 25, 1927; or

(C) is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the national bank) resulting from the conversion of a national bank would be prohibited by the law of such State

from retaining and operating as a branch an identically situated office which was a branch of the national bank immediately prior to conversion.

(2) A national bank (referred to in this paragraph as the "resulting bank"), resulting from the consolidation of a national bank (referred to in this paragraph as the "national bank") under whose charter the consolidation is effected with another bank or banks, may retain and operate as a branch any office which, immediately prior to such consolidation, was in operation as—

(A) a main office or branch office of any bank (other than the national bank) participating in the consolidation if, under subsection (c) of this section, it might be established as a new branch of the resulting bank, and if the Comptroller of the Currency approves of its continued operation after the consolidation;

(B) a branch of any bank participating in the consolidation, and which, on February 25, 1927, was in operation as a branch of any bank; or

(C) a branch of the national bank and which, on February 25, 1927, was not in operation as a branch of any bank, if the Comptroller of the Currency approves of its continued operation after the consolidation.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the resulting national bank) resulting from the consolidation into a State bank of another bank or banks would be prohibited by the law of such State from retaining and operating as a branch an identically situated office which was a branch of the State bank immediately prior to consolidation.

(3) As used in this subsection, the term "consolidation" includes a merger.

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to state banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto: Provided, That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus,

if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock.

(d) The aggregate capital of every national banking association and its branches shall at no time be less than the aggregate minimum capital required by law for the establishment of an equal number of national banking associations situated in the various places where such association and its branches are situated.

(e) No branch of any national banking association shall be established or moved from one location to another without first obtaining the consent and approval of the Comptroller of the Currency.

(f) The term "branch" as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

(g) This section shall not be construed to amend or repeal sections 601-604 of this title, authorizing the establishment by national banking associations of branches in foreign countries, or dependencies, or insular possessions of the United States.

(h) The words "State bank," "State banks," "bank," or "banks," as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws.

APPENDIX B.

Section 659.06, Florida Statutes:

(1) (a) Any bank or trust company shall have only one place of doing business, which shall be located in the community specified in its original articles of incorporation, and the business of the bank or trust company shall be transacted at its banking house so located in said community specified, and not elsewhere. A bank or trust company may, however, change the location of its banking house within the community shown in its articles of incorporation with the written approval of the commissioner. Application for such approval shall be in such form and contain such information as the Commissioner may require.

(b) A bank may contract with proper authorities of any elementary or secondary school or institution caring for minors for the participation by the bank in any school or institutional thrift or savings plan, and it may accept deposits at such school or institution, either by its own collector or by any representative of the school or institution who becomes the agent of the bank for such purposes. Withdrawal from any account carried with the bank by any such school or institution shall be made only at the banking house of said bank.

(2) With the prior written approval of the commissioner a bank may operate a drive-in facility or walk-up facility providing one or more tellers to serve patrons in vehicles and on foot. It shall not be necessary that such facility be a part of or physically connected to the main banking room or building of the bank if the facility is located on the property on which the main banking house is situated or on prop-

erty contiguous thereto. Property which is separated from the property on which the main banking house is situated only by a street, walkway or alleyway shall, for the purposes of this subsection, be deemed contiguous to the property on which the main banking house is situated.

The operation of any drive-in or walk-up facility which is not located on the property on which the main banking house is situated or on property contiguous thereto shall constitute a violation of subsection (1); provided, however, subsection (2) shall not apply to any facilities existing on or prior to January 1, 1965.